

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 327 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

NABUMIYA @ MUNNO MAJIDMIYA SHEIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for the Petitioner.
MR RM CHAUHAN, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 27/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 15-1-98 passed by the Police Commissioner, Vadodara City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on five criminal cases registered against him under sections 457 and 380 of the IPC which are pending investigation. Over and above these criminal cases, the detaining authority has also placed reliance on the statements of three witnesses of the alleged incidents of 16-10-97, 4-11-97 and 10-12-97 whose names have not been disclosed claiming privilege of public interest conferred upon the detaining authority under Section 9 (2) of the PASA Act. With regard to the incident of 16-10-97 it is alleged that when was asked to keep in mortgage the golden chain. However, as the witness felt the same to be a stolen property, he refused to accede to the said request of the petitioner with the result the witness was beaten. People gathered and thereafter the petitioner had taken out knife and rushed towards the witness with the result an atmosphere of fear and terror was created in the locality. With regard to the incident of 4-11-97, it is alleged that the detenu went to the witness and told him that at his instance he was detained under PASA and thereafter was beaten. The petitioner and his associate thereafter rushed towards the witness and other people and because of that an atmosphere of fear and terror was created. With regard to the third incident of 10-12-97, it is alleged that the witness was beaten by the petitioner and his associate on the ground that he was informant of the police.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioner are true, the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the

allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also vitiated . The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 15-1-98 is quashed and set aside. The detenu Nabumiya @ Munno Majidmiya Shaikh is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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